

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MINNESOTA**

IN RE PORK ANTITRUST  
LITIGATION

This Document Relates To: ALL  
ACTIONS

No. 0:18-cv-01776

Hon. John R. Tunheim  
Magistrate Judge Hildy Bowbeer

**CLASS PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT  
OF ORDER PERMITTING PRODUCTION OF DOCUMENTS BY  
THIRD PARTY COBANK, ACB**

On November 23, 2020, Direct Purchaser Plaintiffs, Commercial and Institutional Indirect Purchaser Plaintiffs, and Consumer Indirect Purchaser Plaintiffs (collectively, “Class Plaintiffs”) served a document subpoena on non-party CoBank, ACB (“CoBank”). *See* Declaration of Stephen M. Owen (“Owen Decl.”), Exhibit A. As an entity regulated by the Farm Credit Act, CoBank notified Class Plaintiffs that it may not produce responsive documents except pursuant to a Court order permitting such a production to be made. CoBank, however, does not oppose entry of an order permitting it to produce nonprivileged, responsive documents the parties have identified through one custodian and a set of search terms. Owen Decl., Ex. B (email dated January 13, 2021 from CoBank counsel N. Hendrix to S. Owen). Therefore, pursuant to Fed. R. Civ. P. 45, Plaintiffs seek an order permitting CoBank to comply with the subpoena consistent with the agreement between Class Plaintiffs and CoBank and as required by 12 C.F.R. § 618.8330(b). Additionally, CoBank is entitled to the protections of the Protective Order in responding to Plaintiffs’ subpoena. (*See* Dkt #212).

A party may “obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case . . . [and] [i]nformation within this scope of discovery need not be admissible in evidence to be discoverable.” Fed. R. Civ. P. 26(b)(1). “Courts construe the Rule broadly to encompass any matter that bears on, or that reasonably could lead to other matter[s] that could bear on, any issue that is or may be in the case.” *Arctic Cat, Inc. v. Bombardier Recreational Prods, Inc.*, No. 12-cv-2692 (JRT/LIB), 2013 WL 12153519, \*2 (D. Minn. Nov. 7, 2013) (internal quotations and citations omitted).

The subpoena consists of four requests seeking documents relevant to the claims asserted in this case, including documents reflecting the work CoBank performed on behalf of Defendants, such as analyses of pricing, production, supply, and demand in the Pork Market during the Relevant Period. *See* Owen Decl., Ex. A. Plaintiffs have met and conferred with counsel for CoBank and have agreed on a set of search terms and a custodian for which CoBank would produce responsive documents, subject to any narrow follow-up that may result from documents CoBank produces. *See* Owen Decl., Ex. B. Plaintiffs and CoBank have further agreed that CoBank does not waive any claims of privilege in connection with its contemplated production.

Federal Rule of Civil Procedure 45(a) allows the issuance of subpoenas for production of documents in a non-party’s custody or control. CoBank does not seek an order quashing or modifying the subpoena, and if it did, it would bear the burden of demonstrating that the subpoena is overly broad, unduly burdensome, or seeks information that is not relevant. *See, e.g., Heitzman v. Engelstad*, No. 12–cv–2274 (MJD/LIB), 2013

WL 4519403, at \*3 (D. Minn. July 11, 2013), *aff'd*, 2013 WL 4516320 (D. Minn. Aug. 26, 2013). Given that CoBank is not objecting to production under the negotiated search parameters, good cause exists to permit CoBank to comply with the subpoena consistent with the agreement between Class Plaintiffs and CoBank.

Class Plaintiffs respectfully ask the Court to enter an order permitting CoBank to produce documents responsive to Class Plaintiffs' subpoena consistent with the agreement between Class Plaintiffs and CoBank and as required by 12 C.F.R. § 618.8330(b).

Dated: January 27, 2021

/s/ Bobby Pouya

Bobby Pouya (Pro Hac Vice)  
Clifford H. Pearson (Pro Hac Vice)  
Daniel L. Warshaw (Pro Hac Vice)  
Michael H. Pearson (Pro Hac Vice)  
PEARSON SIMON & WARSHAW, LLP  
15165 Ventura Boulevard, Suite 400  
Sherman Oaks, CA 92403  
Telephone: (818) 788-8300  
Facsimile: (818) 788-8104  
cppearson@pswlaw.com  
dwarshaw@pswlaw.com  
bpouya@pswlaw.com  
mpearson@pswlaw.com

Melissa S. Weiner (MN #0387900)  
Joseph C. Bourne (MN #0389922)  
PEARSON, SIMON & WARSHAW, LLP  
800 LaSalle Avenue, Suite 2150  
Minneapolis, MN 55402  
Telephone: (612) 389-0600  
Facsimile: (612) 389-0610  
mweiner@pswlaw.com  
jbourn@pswlaw.com

/s/ Arielle S. Wagner

Arielle S. Wagner (MN #0398332)  
W. Joseph Bruckner (MN #0147758)  
Brian D. Clark (MN #0390069)  
Craig S. Davis (MN #0148192)  
Simeon A. Morbey (MN #0391338)  
Stephen M. Owen (MN # 0399370)  
Stephanie A. Chen (MN #0400032)  
LOCKRIDGE GRINDAL NAUEN P.L.L.P.  
100 Washington Avenue South, Suite 2200  
Minneapolis, MN 55401  
Telephone: (612) 339-6900  
Facsimile: (612) 339-0981  
aswagner@locklaw.com  
wjbruckner@locklaw.com  
csdavis@locklaw.com  
bdclark@locklaw.com  
samorbey@locklaw.com  
smowen@locklaw.com  
sachen@locklaw.com

*Co-Lead Class Counsel for Direct Purchaser Plaintiffs*

Bruce L. Simon  
PEARSON, SIMON & WARSHAW, LLP  
350 Sansome Street, Suite 680  
San Francisco, CA 94104  
Telephone: (415) 433-9000  
Facsimile: (415) 433-9008  
bsimon@pswlaw.com

/s/ Shana E. Scarlett  
Shana E. Scarlett  
HAGENS BERMAN SOBOL SHAPIRO LLP  
715 Hearst Avenue, Suite 202  
Berkeley, CA 94710  
Telephone: (510) 725-3000  
Facsimile: (510) 725-3001  
shanas@hbsslaw.com

Steve. W. Berman  
Breanna Van Engelen  
HAGENS BERMAN SOBOL SHAPIRO LLP  
1301 2nd Avenue, Suite 2000  
Seattle, WA 98101  
Telephone: (206) 623-7292  
Facsimile: (206) 623-0594  
steve@hbsslaw.com  
breannav@hbsslaw.com

/s/ Daniel E. Gustafson  
Daniel E. Gustafson (#202241)  
Daniel C. Hedlund (#258337)  
Michelle J. Looby (#388166)  
Britany N. Resch (#0397656)  
GUSTAFSON GLUEK PLLC  
120 South 6th Street, Suite 2600  
Minneapolis, MN 55402  
Telephone: (612) 333-8844  
Facsimile: (612) 339-6622  
dgustafson@gustafsongluek.com  
dhedlund@gustafsongluek.com  
mlooby@gustafsongluek.com  
bresch@gustafsongluek.com

*Co-Lead Counsel for Consumer Indirect  
Purchaser Plaintiffs*

/s/ Shawn M. Raiter  
Shawn M. Raiter (MN# 240424)  
LARSON • KING, LLP  
2800 Wells Fargo Place  
30 East Seventh Street  
St. Paul, MN 55101  
Telephone: (651) 312-6518  
sraiter@larsonking.com

Jonathan W. Cuneo  
Joel Davidow  
Blaine Finley  
Yifei “Evelyn” Li  
CUNEO GILBERT & LADUCA, LLP  
4725 Wisconsin Avenue NW, Suite 200  
Washington, DC 20016  
Telephone: (202) 789-3960  
jonc@cuneolaw.com  
joel@cuneolaw.com  
bfinley@cuneolaw.com  
evelyn@cunelolaw.com

*Co-Lead Counsel for Commercial and  
Institutional Indirect Purchaser Plaintiffs*